

Report From Agency

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

CR 08-002

The Wisconsin Department of Transportation proposes an order to create ch. TRANS 178, relating to the Unified Carrier Registration system.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the chief clerks of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:

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PART 1

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 194.407, Stats., as created by 2007 Wis. Act 20

Statutory authority: s. 194.407 (1) and (3), Stats., as created by 2007 Wis. Act 20

Explanation of agency authority: Section 194.407 of the statutes authorizes the Department to implement and administer a unified registration system for motor carriers consistent with 49 USC 13908 and 14504a, and to prescribe annual fees for that registration.

Related statute or rule: Section 194.407, Stats., 49 USC 13908 and 14504a, 49 CFR 367.

Plain language analysis: This chapter establishes in Wisconsin Administrative Code the fees to be charged under the Unified Carrier Registration (UCR) system, and establishes a method for counting the number of vehicles so that an entity knows whether it is required to register under UCR and, if so, which fee bracket applies to the entity.

Summary of, and preliminary comparison with, existing or proposed federal regulation: This proposed ~~emergency~~ rule complies and is consistent with federal law and regulations pertaining to the Unified Carrier Registration system.

Comparison with rules in adjacent states:

Michigan: There are no regulations pertaining to UCR, as of ~~October 24, 2007~~ January 3, 2008.

Minnesota: Minnesota is not a participating state in the UCR program in 2007. There are no regulations pertaining to UCR, as of January 3, 2008 ~~October 24, 2007~~.

Illinois: There are no regulations pertaining to UCR, as of January 3, 2008 ~~October 24, 2007~~.

Iowa: There are no regulations pertaining to UCR, as of January 3, 2008 ~~October 24, 2007~~.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: This proposed ~~emergency~~ rule is derived solely from federal law, federal regulation and Unified Carrier Registration Agreement, both of which are authorized by 49 USC 13908 and 14504a and implement those sections. If Wisconsin chooses not to participate in the UCR program, Wisconsin will forfeit revenues from carrier registration pursuant to federal law.

Effect on small business and, if applicable, any analysis and supporting documentation used to determine effect on small businesses: This proposed ~~emergency~~ rule is derived solely from federal law, federal regulation, and Unified Carrier

Registration Agreement. Any effect on small businesses is a result of federal law, federal regulation and the Unified Carrier Registration Agreement. The bill will affect some small businesses by requiring them to pay an annual registration fee based on the size of its truck fleet, with fees of \$39 to \$806 annually. These fees are established under federal law at 49 CFR 367.20 but may be revised annually by publication in the federal register. If Wisconsin does not charge these fees, small businesses that operate affected trucks and trailers outside this state will nevertheless be required to pay these same fees to other states. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: This proposed rule is derived solely from federal law, federal regulation, and Unified Carrier Registration Agreement. Any fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands is a result of federal law, federal regulation and the Unified Carrier Registration Agreement. The Unified Carrier Registration Agreement authorizes states to exempt solely intra-state carriers and qualified school buses from the registration fee, and the Department has made registration and payment of the fees optional for those entities.

Anticipated costs incurred by private sector: This proposed rule is derived solely from federal law, federal regulation, and Unified Carrier Registration Agreement. Any cost incurred by the private sector is a result of federal law, federal regulation and the Unified Carrier Registration Agreement. Many parties subject to these fees are paying higher fees under the Single State Registration System (SSRS), which the Unified Carrier Registration fee replaces; they will see significant annual fee reductions. Numerous smaller motor carriers, motor private carriers, brokers, leasing companies, and freight forwarders are exempt from SSRS and are made subject to Unified Carrier Registration; they will be required to pay annual fees of \$39-\$806 or more depending upon their fleet size. The sum of fees collected by this state will be the same under Unified Carrier Registration as presently collected under SSRS. Under federal law, federal regulation, and the Unified Carrier Registration Agreement, the amounts of UCR registration fees is established so that the amount collected, in total, is the same as the total amount of fees that had been collected under the former SSRS program. The base of More motor carriers from which the fee is collected differs from the base are required to register and pay fees under UCR than were required to register and pay under the SSRS program. Therefore, some types of carriers may pay more (those newly subject to UCR) or less (those previously subject to SSRS) fees under UCR, but the total sum of fees paid by all registrants is the same.

Agency contact person and copies of proposed rule: Copies of the proposed rule can be obtained, without cost, by writing to Carson P. Frazier, Division of Motor Vehicles, P.O. Box 7911, Room 255, Madison WI 53707-7911, by calling (608) 266-7857, or via e-mail at carson.frazier@dot.state.wi.us.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Chapter Trans ~~178~~is 178 is created to read:

CHAPTER TRANS 178
UNIFIED CARRIER REGISTRATION SYSTEM

Trans 178.01 Authority, purpose, and scope. (1) As authorized by s. 194.407, Stats., the purpose of this chapter is to establish, consistent with federal law, an annual fee under s. 194.407, Stats., for a fleet of commercial motor vehicles that is used in interstate commerce, is subject to the Unified Carrier Registration Agreement, and whose owner or operator is based in Wisconsin, or is based in a state that is not participating in the UCR and has elected to declare Wisconsin as its base state.

(2) This chapter applies to any motor carrier, motor private carrier, freight forwarder, broker, and leasing company that meets any of the following criteria:

(a) Operates any commercial motor vehicle in interstate commerce.

(b) Has no vehicles but is a motor carrier related business located in Wisconsin.

(c) Has declared Wisconsin as the base state for UCR, as required in federal law 49 USC 14504a and the Unified Carrier Registration Agreement.

(3) This chapter applies to any motor carrier, motor private carrier, freight forwarder, broker, or leasing company that operates any commercial motor vehicle in interstate commerce, as provided in 49 USC 14504a. The requirement to register under the Unified Carrier Registration system is not affected by the type of motor carrier authority that the motor carrier, motor private carrier, freight forwarder, broker, or leasing company possesses, and is not affected by the type of business activity undertaken.

Trans 178.02 Definitions. Words and phrases used in this chapter have the meanings given in 49 USC 14504a, and in the Unified Carrier Registration Agreement unless this chapter provides a different definition. In this chapter:

(1) “Broker” means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by a motor carrier for compensation.

(2) “Commercial motor vehicle,” as defined in 49 USC 31101, means a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle meets any of the following criteria:

(a) Has a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds.

(b) Is designed to transport more than 10 passengers including the driver.

(c) Is used in transporting material found by the secretary of the United States department of transportation to be hazardous under 49 USC 5103 and transported in a quantity requiring placarding under regulations prescribed by that secretary.

(3) “Freight forwarder” means a person holding itself out to the general public, other than as a pipeline, rail, motor or water carrier, to provide transportation of property for compensation and, in the ordinary course of its business, does all of the following:

(a) Assembles and consolidates, or provides for assembling and consolidating, shipments, and performs or provides for break-bulk and distribution operations of the shipments.

(b) Assumes responsibility for the transportation from the place of receipt to the place of destination.

(c) Uses for any part of the transportation a carrier subject to 49 USC subtitle IV.

(4) “Interstate commerce” means trade, traffic, or transportation in the United States between any of the following:

(a) A place in a state and a place outside that state, including a place outside of the United States.

(b) Two places in a state through another state or through a place outside of the United States.

(c) Two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States.

(d) Wisconsin and any adjacent state under a registration reciprocity agreement between Wisconsin and that other state.

(5) “Intrastate commerce” means any trade, traffic, or transportation in any state that is not described in the term “interstate commerce” and is conducted wholly within a state.

(6) “Leasing company” means a lessor that is engaged in the business of leasing or renting for compensation motor vehicles without drivers to a motor carrier, motor private carrier, or freight forwarder.

(7) “MCS-150” means the form prescribed by the federal Motor Carrier Safety Administration for Motor Carrier Identification Report, Application for USDOT Number.

(8) “Motor carrier” means a person providing motor vehicle transportation for compensation.

(9) “Motor private carrier” means a person, other than a motor carrier, transporting property by motor vehicle when all of the following occur:

(a) The transportation is as provided in 49 USC 13501.

(b) The person is the owner, lessee, or bailee of the property being transported.

(c) The property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

(10) “Motor vehicle” means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof as determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

(11) “Registrant” means a motor carrier, motor private carrier, broker, leasing company, or freight forwarder.

(12) “Registration year” means a calendar year.

(13) “Unified Carrier Registration Agreement” or “UCR Agreement” means the interstate agreement developed under the UCR Plan governing the collection and distribution of registration information and UCR fees paid by motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies pursuant to 49 USC 14504a.

Trans 178.03 Fees. ~~(1) As~~ Except as provided in par. (b), as provided in 49 CFR 367.20, fees for registration year 2007 and thereafter are as follows:

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per company for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per company for broker or leasing company
B1	0-2	\$39	\$39
B2	3-5	\$116	\$39
B3	6-20	\$231	\$39
B4	21-100	\$806	\$39
B5	101-1,000	\$3,840	\$39
B6	1,001 and above	\$37,500	\$39

(2) If the Federal Motor Carrier Safety Administration or the U.S. department of transportation acting under 49 USC 14504a(d)(7) publishes in the federal register a schedule of fees for the Unified Carrier Registration Plan that differ from the fees set forth in par. (a), the department shall send notice of those revised fees to the chairpersons of the standing committees of the legislature having jurisdiction over transportation. If no chairperson notifies the secretary of transportation within 14 working days after the date of the department's notice that the committee has scheduled a meeting for the purpose of reviewing the fees, the department shall implement the fees. If within 14 working days after the date of the department's notice a chairperson of a committee notifies the secretary of transportation that the committee has scheduled a meeting for the purpose of reviewing the fees, the department shall implement the fees only with the approval of the committee.

Trans 178.04 Determining the number of commercial motor vehicles. (1) The fee is determined by the number of commercial motor vehicles that the registrant operates in interstate commerce, which shall be counted as follows as provided in the UCR Agreement:

(a) The number of commercial motor vehicles owned or operated subject to the fee under this chapter is the greater of the following:

1. The number reported on the MCS-150 most recently filed with the U. S. department of transportation.

2. The total number of commercial motor vehicles owned or operated for the 12-month period ending on June 30 immediately prior to the beginning of the registration year.

(b) The registrant shall include the number of commercial motor vehicles owned or operated by the registrant, or controlled by the registrant under a lease having a term longer than 30 days. A registrant may not include any vehicle that is operated by the registrant under a lease of 30 days or less.

(c) Before issuing any documentation of UCR Agreement compliance, the department may require the registrant to reconcile any discrepancy between the number of motor vehicles owned and leased as reported on the MCS-150 most recently filed with the U. S. department of transportation.

(d) The registrant may, at its sole option, add to the sum of vehicles required to be counted under this section any of the following:

1. Any self-propelled commercial motor vehicle operated in intrastate or interstate commerce for compensation regardless of the weight of the vehicle, or the number of passengers transported by the vehicle, or whether the registrant owns or leases the vehicle.

2. Any motor vehicle used only in intrastate commerce regardless of the state in which the vehicle has been operated, or whether the registrant owns or leases the vehicle.

(e) The registrant may exclude the number of commercial motor vehicles owned or leased that were operated exclusively in the intrastate transportation of property, waste or recyclable material.

(2) A registrant that operates commercial motor vehicles solely in intrastate commerce is not required to register or pay any fee under this chapter.

(3) Except as provided in sub. (1), only motor vehicles that are operated in interstate commerce shall be counted under this section. Except as provided in sub. (1), motor vehicles operated exclusively in intrastate commerce may not be counted under this section.

(4) Except as provided in sub. (1), a school bus ~~may not~~ is not required to be counted under this chapter if it is all of the following:

(a) Operated exclusively for school activities.

(b) Not operated for any charter activity.

(c) Not used for any activities other than school activities.

(5) A business that is a single legal entity and operates more than one type of carrier operation that is subject to this chapter shall pay the fee that is the highest applicable fee for any of its carrier operations subject to this chapter. A business that comprises multiple legal entities that operate separate carrier operations subject to this chapter shall pay all appropriate fees for each legal entity.

(6) The department may authorize and designate an agent to collect fees and process registration applications under this chapter.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this ____ day of March, 2008.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

ANALYSIS OF FINAL DRAFT OF TRANS 178

(a) **Basis and Purpose of Rule.** This proposed ~~emergency~~ rule is derived solely from federal law, federal regulation, and Unified Carrier Registration Agreement. It establishes the fees to be charged under the Unified Carrier Registration (UCR) system, and establishes a method for counting the number of vehicles so that an entity knows whether it is required to register under UCR and, if so, which fee bracket applies to the entity.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on March 5, 2008. The Department clarified language relating to optional registration of certain units, as discussed below in par. (d).

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following two individuals spoke for information at the hearing:

Robert W. Christian, Executive Director, Wisconsin School Bus Association, Sheboygan, WI.

Tom Howells, President, Wisconsin Motor Carriers Association, Madison, WI.

(d) **Summary of Public Comments and Agency Response to those Comments:** Mr. Christian questioned the school bus exemption under s. Trans 178.04(4) and asked whether other states would recognize the exemption for Wisconsin-based school buses that traveled into that other state. The Department responded that if the other state requires school bus registration under UCR, that other state could demand proof of registration for that school bus. However, it is unclear how the other state would verify the school's declared fleet size of vehicles that are exempt from registration fees. It is unknown to the Department what other states may require of school buses, or what exemptions they might recognize. The Department made no changes to the rule in response to this comment.

Mr. Howells questioned the fleet size used for the fee brackets, and noted that a relatively small motor carrier with a limited number of power units and semi-trailers might barely fit within the 101-1000 unit fee bracket, and be subject to the same fee as a large motor carrier having 10 times more units. The Department responded that the fee brackets were recommended by the UCR Board of Directors and approved by the Secretary of U.S. Department of Transportation under 49 USC 14504a (d) (7). The Department made no changes to the rule in response to this comment.

Mr. Howells also questioned the purpose of the 'optional' counting of certain fee-exempt units in s. Trans 178.04(1)(d) and asked whether the language could be clarified. Federal law at 49 USC 14504a(a)(1)(B) and the UCR Agreement at par. 4 give the motor carrier the option to count those units. Accordingly, s. Trans 178.04(1)(d) allows motor carriers to count them in the event it provides some benefit to the motor carrier. In response to Mr. Howell's comments, the Department has modified the introductory language to clarify that adding exempt vehicle to the count is entirely voluntary at the discretion of the registrant.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** No changes made.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained a number of recommendations, all of which have been incorporated into the proposed rule.

(g) **Final Regulatory Flexibility Analysis.** This proposed ~~emergency~~ rule is derived solely from federal law, federal regulation, and Unified Carrier Registration Agreement. Any effect on small businesses is a result of federal law, federal regulation and the Unified Carrier Registration Agreement. The bill will affect some small businesses by requiring them to pay an annual registration fee based on the size of its truck fleet, with fees of \$39 to \$806 annually. These fees are established under federal law at 49 CFR 367.20 but may be revised annually by publication in the federal register. If Wisconsin does not charge these fees, small businesses that operate affected trucks and trailers outside this state will nevertheless be required to pay these same fees to other states.